Q. I understand. Did you ever warn Mr. Huddleston of his constitutional rights to remain silent and be aided by counsel?

A. I did.

Q. When did you warn Mr. Huddleston?

A. Immediately after his arrest and he was placed in the vehicle.

Q. How did you warn him?

A. I read him the form 1661. I read it to him verbatim and asked him if he understood the rights. He said that he did.

MR. HAFFNER: Your Honor, I move to strike those last two sentences as non-responsive to the question.

THE COURT: That will go out.

BY MR. HAFFNER:

Q. Did you read him this form -- what was the form number?

A. Form 1661.

Q. 1661. Did you read that form to him in the back seat of the car?

A. That is correct.

Q. Did Mr. Huddleston say he waived those rights?

A. That is correct.

Q. What did he say?

A. He said that he waived the rights and he understood the rights.

Q. Did he sign any waiver of rights form?

A. He did not.

Q. Isn't it your normal practice to have such waivers signed?

A. It is not.

Q. Do you not have available to you such forms for signing waivers?

A. We do.

Q. Do you ever use them?

A. I never have.

Q. Do you have a Treasury form 4176 that is used for signing waiver of constitutional rights?

A. That is the form number, yes.

Q. Do you have those available to you?

A. I do.

Q. Did you have those in your possession when you arrested Mr. Huddleston?

A. I did.

Q. Why —

A. In my briefcase.

Q. Why did you not use that form?

A. I have never used that form in any case. There was no need in this case, in my opinion, since I had a witness with me that was there and heard the rights being waived.

Q. Are there any directions from the Department of Treasury that agents should use these forms and get signed waivers in investigating and arresting people?

A. Not to my knowledge.

Q. Isn't it a fact that during the arrest of Mr. Huddleston you asked him extensive questions about any information he might have about other persons in possession of certain firearms?

A. That is correct.

Q. Is it not a fact that you suspected Mr. Huddleston would provide you with leads to other persons who might also be violating the gun laws?

A. No.

Q. Is it not a fact that you promised Mr. Huddleston that you would obtain some kind of break for him if he provided some information about other persons with guns?

A. No.

Q. Is it not a fact that you told Mr. Huddleston you could make it easier for him if he would provide you certain information?

A. No.

MR. CAMPBELL: Your Honor, I object that these questions are leading and my understanding of voir dire here the defendant has the witness on direct.

THE COURT: Yes, they are, but I don't think there is any problem, Mr. Campbell.

MR. CAMPBELL: Thank you, your Honor.

BY MR. RAPPENSTEIN:

Q. What exactly did you say to Mr. Huddleston regarding information you wanted from him about other persons?

A. I told him that any information he provided for us would be brought to the attention of the United States Attorney.

Q. What would be the purpose of bringing it to the attention of the United States Attorney?

A. Whatever information — for anything he wanted to do with it.

Q. Did you indicate to Mr. Huddleston that it might go easier for him if he provided that information which you would then convey to the United States Attorney?

A. I did not.

Q. You say in the total conversations you had with Mr. Huddleston — how many minutes would you say?

A. About thirty minutes — thirty to forty-five minutes to Ventura County — the Ventura Police Department. The entire trip from Ventura to Santa Barbara which probably takes between thirty-five and forty minutes, I talked to him while we were in front of the U. S. Magistrate and from the trip in the U. S. Magistrate's office in Santa Barbara back to Ventura where we let him off at his place of employment which took another thirty-five or forty minutes.

Q. How much of that conversation centered around his ability to provide you with information about other people who might be in possession of guns?

A. I couldn't say percentagewise.

Q. Would you say fifty percent?

A. In most of the time at the Ventura Police Department it was in filling out forms that we are required to fill out when we make an arrest of an individual, except for the conversation he filled out the — signed the 4473's. And we talked about many things so I couldn't tell you how much time other than it would be probably in excess of — I couldn't say.

Q. It is true that you talked to him about providing information about other people's possession of guns?

A. That is correct.

Q. Did you indicate to Mr. Huddleston that you would put something in your report if he provided information about other persons in possession of guns?

A. I did not.

Q. Let me just have this one more time. Exactly what did you say to him with regard to the information he might provide you?

A. I told him any information he provided me in that regard would be brought to the attention of the U. S. Attorney.

* * *

Page 70, line 17 to Page 78, line 18

DAVID D. BUCKARD,

having been previously duly sworn, resumed the stand and testified further as follows:

Mr. Bernstein: One minute. Is there any particular ruling on point three?

The Court: What is that?

Mr. Bernstein: Point three is the per se exclusion.

The Court: There is no per se exclusion. I find absolutely no authority for per se exclusion of anything since I think that in law enforcement you are entitled to ask people if they want to help to find out about violations by other people.

As a matter of fact, in some aspects of law enforcement that is the only way they can get it done, Mr. Bernstein, that is the only way.

Mr. Bernstein: I understand. I just wanted a ruling on that. Thank you.

DIRECT EXAMINATION (Resumed)

By Mr. Campbell:

Q. Mr. Buckard, directing your attention to the period after the defendant's arrest that day, after you read him his rights, did you ask him any — did you show him any documents?

A. Yes, I showed him three form 4473's that I had acquired from Saul's Loan and Jewelry Company.

Mr. Campbell: Your Honor, there are three documents in front of the clerk marked for identification as Govern-

ment's 2, 3 and 4. At this time I would like to make an offer of proof that these documents, if the custodian of these documents would come and testify that they are kept by him as business records.

THE COURT: All right.

THE CLERK: Government's Exhibit's 2, 3 and 4 marked for identification.

(Exhibits were marked Government's Exhibits 2, 3 and 4 for identification.)

THE CLERK: And placed before the witness.

BY MR. CAMPBELL:

Q. Mr. Rachard, with respect to these documents, did you ask the defendant any questions?

A. Yes.

Q. What did you ask the defendant?

A. I showed him the three forms after I had read him his rights. I asked him if he signed these forms. He looked at each of the three forms and said he signed the forms.

I asked him when he answered the forms if he knew he was a felon and he said, yes, he was a felon. He was a three-time felon.

Then I later asked if he knew he had lied when he said no to the answer to question 8(b), and he said "Yes," he knew he had lied when he answered "No" to the question, but he was only getting the guns back from a gun shop and was not buying any guns.

Q. Do you recall exactly the point in time when you asked him these questions the first time?

A. The first time was on the way between the Ventura Police Department on the way to Santa Barbara. I asked these questions several times because we were talking about

this. I asked him at least on one other occasion which I do not recall. I think the first time was between Ventura.

Q. *Was just the one time we have already established he was advised?*

A. It was on the way to the Ventura Police Department for arraignment before the U. S. Magistrate.

Q. *That was the same afternoon?*

A. The same afternoon — about — the same afternoon we left Ventura Sheriff's Department. It was about 2:30 so it was the same afternoon.

Mr. Caldwell: I have no further questions of the witness, your Honor.

The Court: All right.

Cross examination?

Mr. Sarmanian: Yes, your Honor.

* * *

Page 78, line 1 to line 24

By Mr. Sarmanian:

Q. *Before the time you questioned Mr. Huddleston, was it your opinion he was a three-time felon?*

A. That is correct.

Q. *Was it your impression that he was a three-time felon when you first reported the case to the U.S. Attorney?*

A. That is correct.

Q. *When were you informed he was not a three-time felon?*

A. Just before — when they indicted him, I believe, or just before it went to indictment.

Q. *When would that date be?*

A. I couldn't say. I don't recall.

Q. Who informed you of that?

A. It was a phone call from the U.S. Attorney's office, a message left in my box.

Q. From whom did that message come?

A. I don't recall. They called me and the message was that the two of the convictions were not felonies; however, one was. That was the message I received. It was still presented and I would have to appear to meet the board for indictment. I did appear to meet the grand jury for indictment.

* * *

Page 87, line 1 to Page 92, line 24

MORRIS GOTTLIEB,

called as a witness by the government, having been first duly sworn, was examined and testified as follows:

THE CLERK: Would you state your true and correct name.

THE WITNESS: Morris Gottlieb, G-o-t-t-l-i-e-b.

MR. CAMPBELL: May Government's Exhibits for identification 2, 3 and 4 be placed before the witness?

THE CLERK: Government's 2, 3 and 4 before the witness.

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. What is your occupation?

MR. SAPERSTEIN: Could I just ask what 2, 3, and 4 are?

MR. CAMPBELL: Those are the three Treasury forms 4473's.

MR. SAPERSTEIN: Thank you.

THE WITNESS: I am a pawnbroker.

BY MR. CAMPBELL:

Q. What is the name of your business, sir, the name of your business?

A. Saul's Loan and Jewelry. S-a-u-l-s Loan and Jewelry. You want the address?

Q. Please.

A. 536 South Oxnard Boulevard, Oxnard, California.

Q. Mr. Gottlieb, have you ever requested a license as a gun dealer under Chapter 44 of Title 18 United States Code?

A. Yes.

Q. Do you have such a license?

A. Yes.

MR. CAMPBELL: Your Honor, may I approach the clerk?

MR. SAPERSTEIN: I object to that question, your Honor. I move to strike the answer on the grounds it is conclusory.

THE COURT: The objection is overruled.

THE CLERK: Government's Exhibit 5 marked for identification and placed before the witness.

(Said exhibit was marked Government's Exhibit 5 for identification.)

BY MR. CAMPBELL:

Q. Now, Mr. Gottlieb, first of all with respect to Government's Exhibit 5 for identification, do you recognize those documents?

A. You mean the license?

Q. Yes.

A. Yeah.

Q. Do you recognize it? Is that a copy of the license issued to you?

A. Yes, 05339. I remember that number all the time.

Q. Is that your application?

A. That is the number 05339, yeah.

Q. Is that your application attached to it?

A. Uh-huh.

Mr. Cranwell: At this time I move Government's 5 into evidence.

The Court: Objection?

Mr. Harrington: Yes, your Honor. I have just barely seen it, but it is my recollection that the document on top is not signed. There is no evidence that it is a license. It is a typed carbon. I don't know what it is.

The Court: Let me see the document.

(Brief pause.)

Mr. Harrington: There is a place on it for a signature that says it is a license but there is no signature there.

The other document, as I understand it, is an application which does not indicate whether or not he was licensed.

The Court: The objection is sustained.

Mr. Saferstein, is there any question that this man is a licensed gun dealer, that he has made application and license has been issued to him?

Mr. Harrington: Is there any question about it?

The Court: Yes.

Mr. Harrington: I have no first-hand knowledge whether or not he is.

The Witness: Twenty-six years I have been in the business. We have twenty-six licenses.

By Mr. Campbell:

Q. Mr. Gottlieb, do you recognize the three yellow documents before you that have been marked for identification as Government's 2, 3 and 4?

A. Yes, sir.

Q. What are those documents?

A. 4473 forms.

Q. Treasury forms 4473?

A. 4473 forms.

Q. Do you recognize the signature on those forms?

A. Yes.

Q. Whose signatures appear there?

A. William Huddleston.

Q. At the bottom?

A. And my name, Morris Gottlieb, as owner. Vacilio Ampara as clerk and Vacilio Ampara as clerk.

Q. The other person that you mentioned, is he an employee of yours?

A. Yes, sir.

Q. Is there a standard procedure in your pawnshop for filling out these forms?

A. Yes, sir.

Q. What is that standard procedure?

A. The procedure is when they pick up their rifle or pistol, or anything pertaining to that, they have to fill out one of these forms and answer all the questions and sign their name. Then they show their identification. And then from the bottom on we take it and put it — fill in the type of rifle and what gauge it is and the serial number. Then we sign our name.

Q. Do you follow that procedure in every transaction?

A. Yes.

Q. The clerk that you mentioned, do you know for a fact whether or not he knows this procedure?

A. Yes, sir.

Q. How do you know?

A. Because I am right on top of him all the time. There is no other procedure. It is the only way we can do it.

Q. Have you observed him make transactions?

A. Yes, sir.

Q. Have you ever observed him not to follow that procedure?

A. No.

Q. Are those records maintained by your shop?

A. Yes, sir.

MR. CAMPBELL: Your Honor, at this time I move those three documents into evidence as 2, 3 and 4.

THE COURT: Is there any objection?

MR. SAPERSTEIN: I object to the documents. I don't know which ones they are, but there are two that do not have Mr. Gottlieb's signature on them. I do not believe he has any first-hand knowledge of those documents.

MR. CAMPBELL: Does your Honor wish argument?

THE COURT: Are these records kept in the normal course of the business of Saul's Jewelry Company?

THE WITNESS: Yes.

THE COURT: Is it the normal course of Saul's Jewelry Company to keep such records?

THE WITNESS: Yes.

THE COURT: The objection is overruled.
2, 3 and 4 in evidence.

* * *

Page 94, line 8 to Page 97, line 25

CROSS EXAMINATION

BY MR. MARENSTEIN:

Q. Mr. Gottlieb, what kind of business do you do in your store? In terms of the crowd there, usually is it a lonely place or are there times when it is crowded?

A. Well, that is a matter of business. We are pretty crowded all the time, pretty busy I would say, yeah.

Q. These form 4473's, are you required by the Treasury Department to fill those out, is that correct?

A. Yes, sir.

Q. That is an activity that helps your business or hurts your business?

MR. CAMPBELL: Objection, your Honor, irrelevant.

THE COURT: The objection is sustained.

BY MR. MARENSTEIN:

Q. What is your attitude toward filling these out? Is it to take care with them or do you consider them a nuisance?

A. It is the law and we have to abide by the law.

Q. Do you normally read the questions to the people who come in picking up guns?

A. We stay right there and see that they fill it out. If sometime we have Spanish-speaking people we have a Spanish boy in there and he explains it to them.

Q. Do you read the questions on part 8 of the form to the person?

A. I don't know what part 8 is.

(Brief pause.)

Q. Part 8 is part of section A, certification of transferee or buyer.

A. No, we don't read that to them.

Q. *Do you tell them how to answer any questions?*

A. Sir, we certainly do.

Q. *What do you tell them?*

A. Well, we tell them to start from the top and fill it out and read all the questions and answer all the questions and sign their name.

Q. *Do you tell them how to answer those questions?*

A. No, I don't tell them how to answer the questions.

Q. *Do you tell them if there are no answers they don't get their gun back?*

A. I don't tell them that.

Q. *Now, just so we get the situation down, a pawn situation is a loan, is that correct?*

A. Yes, sir.

Q. *And the item is pledged as security for that loan?*

A. Yes, sir.

Q. *And you are required by law to have these form 4473's filled out before the debtor can reobtain his gun from pledge?*

A. When he comes to pick up the gun.

Q. *When he comes to pick up the gun it is a precondition to him picking up the gun?*

A. To fill out the form 4473.

Q. *Do you tell them that when they bring the gun in?*

A. No.

Q. Do you read the forms to see they are filled out before you give them the gun?

A. Yes.

Q. How carefully do you read them?

A. Pretty carefully because —

Q. Why do you have to be careful about it?

A. Well, we got — that is the way the government wants it. We have to be careful because if we are not careful then they come to us.

Q. What answers would have to be on part A for you to give the gun back? Is there some sort of crime if they are not set down —

A. Part A1

Q. Part 8, I am sorry, of section A.

A. Section B1

Q. No, section A, question 8.

A. Yes, we read that. Yeah, this is the first — we make sure We a yes or a no.

Q. What answer would have to be there for you to give the guns back?

A. It would have to be — if they put a "Yes" down, we don't give them the gun back.

Q. They all have to be "No"?

A. Yeah! They will have to be No's.

Q. Would you allow a gun to be redeemed by someone who answered yes to the question "Are you a fugitive from justice?"

A. If they answer yes?

Q. Yes.

A. No. They don't get the gun.

Q. Would you allow a gun to be redeemed by someone who answered the question "Are you an alien in the United States?"

A. Yes —

The Court: He already said unless all answers are no he does not get the gun back. Why do you have to go individually?

* * *

Page 100, line 4 to line 18

Q. I understand that. You cannot tell me —

A. You asked me that before. It had to be answered all no's before I let the gun go out.

Q. Now, would you have allowed the gun, any of these guns, to be redeemed by the person who filled out these forms if they had refused to answer any of the questions?

A. Yes.

Q. You would have allowed it to go out?

A. No, they don't go out. I am sorry. I misunderstood. They don't go out. We have trouble too. I am not picking on race, but we have some colored people that don't know how — they just can't grasp. We have to sit with them and sit with them sometimes for a half an hour and make sure that they answer the questions right.

* * *

Page 101, line 23 to Page 102, line 24

Q. What is your relationship to Mr. Rechard?

A. No relationship.

Q. Do you know him?

A. I know him only by sight, name as a Treasury man.

Q. How many times have you seen him?

A. Well, possibly once a week and sometimes twice a week when he has business. Sometimes it is once every two months. Definitely he reviews all the records once a month. Every month he takes down all the records for the month.

* * *

Page 111, line 8 to Page 115, line 12

MR. SAFERSTEIN: I have no further questions.

THE COURT: Redirect?

MR. CAMPBELL: No, your Honor.

THE COURT: Mr. Gottlieb, do you have records for the underlying transaction represented by this?

THE WITNESS: I have my pawn records.

THE COURT: Would you hand them to the clerk.

THE WITNESS: This is the original copies, which one goes to the police department and one goes to Sacramento.

THE COURT: Mark them as Court's 1, 11 and 111.

(Said exhibits were marked Court's Exhibits 1, 11 and 111 for identification.)

THE WITNESS: And I also had my original license.

THE COURT: Will you show that to Mr. Saferstein.

MR. SAFERSTEIN: I have seen it and I am willing to stipulate.

THE COURT: All right.

MR. CAMPBELL: So stipulated, your Honor.

THE COURT: Is there any objection to 5 then?

MR. CAMPBELL: Your Honor, I think at this point both of us will stipulate Mr. Gottlieb was in fact at the time in question a licensed dealer within the meaning of the statute.

THE COURT: All right.

Is that the stipulation?

MR. HAFFENREFER: I thought I was stipulating to the admissibility of the documents.

MR. CAMPBELL: Either way.

THE COURT: 5 is a true copy of the license issued to Mr. Gottlieb?

MR. CAMPBELL: So stipulated.

THE COURT: Is there any objection as to its admissibility?

MR. HAFFENREFER: No objection.

THE COURT: 5 in evidence.

(Exhibit marked Government's Exhibit 5 for identification was admitted in evidence.)

MR. CAMPBELL: Your Honor, at this time may I request —

THE COURT: Just a second.

(Brief pause.)

THE COURT: You have handed me some documents, Mr. Gottlieb, which the clerk has marked as Court's Exhibits I, II and III. Are these records kept in the normal course of the business of Saul's Jewelry Company?

THE WITNESS: Yes.

THE COURT: Is it the normal course of business to keep such records?

THE WITNESS: Yes. It isn't by law. I don't have to keep those records but we do it so to save time on the next loan. If it is the same type of loan it is made on the same type of gun and we have the records that are already in there. On the information, instead of looking for the serial number and everything, it is already in there. And we also know the amount we gave for the loan.

The Court: Do you have any other records with reference to this transaction other than what you have now given me?

The Witness: 4473's. We have the redeemed records.

The Court: That is these exhibits, Court's 1, 11 and 1111

The Witness: These are the loan records.

The Court: Do you have the redeemed records with you?

The Witness: No, I don't.

The Court: Is there anything further?

Mr. Campbell: No further questions.

Mr. Saferstein: May I ask the Court whether those are exhibits in this case or not?

The Court: I am now going to admit them as Court's 1, 11 and 111, the pawn records.

Mr. Saferstein: I would object to that.

The Court: The objection will be noted and overruled.

Mr. Saferstein: May I see them?

The Court: Certainly, you may.

Court's Exhibit 1, 11 and 111 in evidence.

(Exhibits marked Court's 1, 11 and 111 for identification were admitted in evidence.)
(Documents passed to counsel.)

The Court: Mr. Saferstein, I would assume you would want them because they would bring you directly within the Leisure case without any question.

Mr. Saferstein: I thought I was. I just thought you didn't like the Leisure case.

The Court: No. That may be two reasons, Mr. Saferstein. It may be, Mr. Saferstein, and all the documents

which you have filed indicated that these guns belong to Mrs. Huddleston and that was the distinction that was drawn by the government. That might be a valid distinction on appeal.

MR. SAPERSTEIN: I recognize that, your Honor.

THE COURT: All right.

BY MR. SAPERSTEIN:

Q. May I ask you, Mr. Gottlieb, if I may about Court's I, II and III.

Did I hear you right, those are not the records of redemption?

A. No. Those are the records of —

THE COURT: Pawn.

THE WITNESS: That is the first records that they pawned. The redemption is just a duplicate of this card. The only thing is signed that they redeemed it. In other words, they have a yellow pawn slip. They bring it in. They sign their name that they redeemed it.

* * *

Page 116, line 1 to line 19

MR. CLEVENGER: Also, your Honor, in order to shorten time, the government would offer a stipulation.

If Eugene W. Kuhl, of the Oxnard Police Department were called, it is stipulated he would be deemed called, sworn and testified and qualified as an expert in handwriting comparison; that on Government's Exhibits 2, 3 and 4 the handwriting to the questions 8A, B, C, D, E, F and H on each of those three forms is the signature of William Huddleston and in his opinion is the handwriting of the defendant.

THE COURT: Is that satisfactory?

MR. SACHAROW: We have no objection. I see no reason to frame it that way. I am willing to stipulate that that is his handwriting.

THE COURT: That is his handwriting.

Do you accept the stipulation that that is his handwriting?

MR. CARROLL: Yes, your Honor.

THE COURT: All right.

* * *

Page 117 line 2 to line 16

MR. CARROLL: Your Honor, at this time the government would rest.

THE COURT: All right.

MR. SACHAROW: Your Honor, at this time I would move to acquit under Rule 29 for the following grounds.

The first ground I realize has been ruled upon, that is that any false statements that may have been given to question 8B are immaterial, have not been proved to be material to the lawfulness of the sale because of the fact that there was no answer given to 8C on any of the three forms. Therefore, the false answer to question 8B was immaterial.

The second ground for our motion to acquit is that I do not believe the government has carried its burden of proof of showing there was any transfer of

* * *

Page 120, line 25 to Page 127 line 1

THE COURT: The motion for judgment of acquittal will be denied.

* * *

Page 127, line 18 to Page 128, line 8

THE CLERK: Item No. 8, 10760 — Criminal, United States of America v. Charles Huddleston.

MR. HAYENSTEIN: Basically, your Honor, our case will show that this was not what we think is the kind of case that ever should have been brought in the federal courts.

First, we will show this is not the case of a defendant illegally in possession of dangerous firearms like hand guns or submachine guns, but rather this is a case involving hunting rifles and antique rifles, collector's rifles which were bought by the defendant's wife mainly for investment and collection.

We will also show this is not the case of a person buying rifles —

THE COURT: Isn't that argument, Mr. Hayenstein? The law says certain things and that is really argument as to whether or not if a 30-30 rifle Winchester or a 22 rifle Remington, or a Russian 7.62 rifle is within the statute or within, at least within the meaning of the statute, isn't that all really argument?

MR. HAYENSTEIN: Perhaps so, your Honor.

* * *

Page 129, line 14 to Page 133, line 23

MR. HAYENSTEIN: Basically, the facts we intend to prove are as follows, your Honor.

Mrs. Huddleston owned three rifles which she bought in her name. One of these was a Winchester 30-30 rifle which was gold-plated, sold mainly as a commemorative weapon. The second rifle is an antique Russian rifle which Mrs. Huddleston bought as a collector's rifle. The third was a Remington 22.

In 1971 the financial situation of the Huddleston's became very serious. Mr. Huddleston had to quit work because there was no work at the auto repair shop where

he worked. Mrs. Huddleston suffered severe heart attacks and was incapable of bringing in any further money. And to top it off, the Huddlestons and their ten year old son were evicted from the house because it was condemned as unsafe. In order to bring money into the house they sold the rifles. Mrs. Huddleston, however, was too sick to take them to the pawnshop even though they were in her name. Mr. Huddleston took them at various times to Saul's Jewelry, where he received $10, $15, $20 for the rifles. Later the Huddlestons' financial situation improved to the point they were able to redeem the guns from pawn so as not to lose them. However, Mrs. Huddleston was not still very healthy.

THE COURT: You are still trying to get yourself out of the Laisure case, aren't you? You are in it now. You might as well stay there.

MR. SAPERSTEIN: We have a community property state, your Honor.

THE COURT: That ain't gonna' help you. You are in as good a state as you can be in in terms of Laisure right now on the law.

MR. SAPERSTEIN: I understand the Laisure frying pan-fire situation.

THE COURT: But you are trying to get yourself into the fire.

Let us assume that the Laisure situation is the frying pan and the frying pan does not have any grease and any fire under it now. That is what you are trying to put it in there.

MR. SAPERSTEIN: The fire is illegal possession.

THE COURT: But Laisure has already taken care of that in terms of the Fifth Circuit, at least. The Ninth Circuit has not spoken and neither has the Supreme Court spoken on that question. But the best you can do for your client

I would think, I am not going to try your case, but the best you can do for your client is get yourself right within these facts. Don't bring in anything extraneous, for instance, that these guns — if you take the position that it is community property you are in good shape right now because the pawn ticket is in Mr. Huddleston's name. That puts you right smack dab in Leisure. If they are Mrs. Huddleston's guns then you've got a possible distinction which can be drawn by this Court and this Court may be upheld by the court of appeals and then you are in big trouble.

MR. HAYWORTH: I understand the distinction on the Leisure. On the other hand I am somewhat fearful of putting my client in the position of admitting illegal possession of guns which he might be doing.

THE COURT: He is not being charged with that. If Leisure is right there is no problem. If it is not right then what difference does it make. He has already been prosecuted. He can't be prosecuted anymore, can he? He can't be punished again because the state court has a rule that you can't be punished for basically the same offense out of the same transaction, not having to do with double jeopardy.

MR. HAYWORTH: I am wondering, your Honor, having put yourself in the Leisure situation and then it's your own gun, and therefore a dismissal on the question of whether you filed a false form holding it is not applicable in that situation. I do not see what stops the government from then bringing a case on possession.

THE COURT: Well, they can't on possession because Bass has already taken care of that. The Supreme Court has spoken on that issue. That is why they didn't bring it here.

MR. HAYWORTH: Well, I am fearful — Bass only requires them to show interstate commerce nexus.

THE COURT: Well, with reference to the possession.

MR. SAVERNTHIN: That is right.

THE COURT: Obviously they cannot do that here or they would have brought that charge too unless things have changed upstairs.

MR. SAVERNTHIN: Well, it is my contention and that is why I pointed it out in the brief, that things have changed upstairs because it is much easier in bringing these false statement cases than it is in possession on proof, especially when it comes to interstate commerce. I have no guarantee that my client will not be prosecuted for possession if I sacrifice my Laisure rights by putting him into the situation where he admits ownership of those guns.

THE COURT: Maybe we can get Mr. Campbell to commit himself on the record for the government as to whether or not the government contemplates any further proceedings in the event of any disposition of this matter.

MR. CAMPBELL: You are sort of asking me to help the defendant place himself in a position that I really hope he doesn't go into, your Honor.

I think it is the policy of our office that once we have had, you might say, one swing at a person we do not go at him again. I would say on that basis, regardless of the result of this case, we would not be charging the defendant with any collateral crime that arose out of these same transactions. If we had any intention we would have already done so.

MR. SAVERNTHIN: Thank you, your Honor.

* * *

Page 137, line 1 to Page 151, line 18

WILLIAM CANNON HUMMERTON, the defendant herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

THE CLERK: Would you state your true and correct name.

THE WITNESS: William Carroll Huddleston.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. BAYERSTEIN:

Q. In September 1971, Mr. Huddleston, can you describe the financial situation of you and your family at that time?

A. It was very bad. We did not even have grocery money.

Q. Did you have a job in September of '71?

A. I had a job. I quit the job I was working at in September. We weren't doing anything at the shop. It was so slow there just wasn't any work. It had been that way for a month or two before.

Q. What kind of job was that?

A. Automobile painter.

Q. How was your wife's health at that time?

A. It was bad. She was just recuperating from a heart attack.

Q. Was she able to bring in money as she had before?

A. She wasn't even able to drive. She wasn't even supposed to be out of the house.

Q. What was your housing situation in September and October of '71?

A. In October they evicted us from our house. I have a clipping of the story from the Star-Free Press if you wish to see it.

Q. Where did you go after you were evicted?

A. We set our furniture out in the street on some city property.

Q. Do you have the article with you?

A. Yes, I do.

Q. Could you hand that to me?

I would like to have this identified as Defendant's Exhibit B.

THE COURT: B for identification.

Is there any objection, Mr. Campbell?

MR. CAMPBELL: Your Honor, I would object to this line of questioning on the grounds of relevancy.

MR. HAFFNERTH: I am just trying to show his state of mind during the relevant events as to his ability to comprehend.

THE COURT: As to that issue, the objection is overruled.

Any objection to this article?

MR. CAMPBELL: No, your Honor.

THE COURT: B in evidence.

(Said exhibit was marked Defendant's Exhibit B for identification and admitted in evidence.)

MR. HAFFNERTH: Thank you, your Honor.

Q. Now, this case, as you know, involves three guns which were pawned by you at Saul's Loan and Jewelry. Could you describe those three guns?

A. One of them was a Winchester 30-30, Golden Spike commemorative.

One was a 7.62 Russian and the other was a 22 semi-automatic Remington.

Q. How old was the Russian gun?

A. It is 1926.

Q. Did you pawn these three guns that we have described?

A. Yes, I did.

Q. When did you make the first pawn?

A. I believe it was in September of '71.

Q. Which gun did you pawn?

A. The 22.

Q. What did you get as a loan on that?

A. $10.

Q. Did you pawn the other two guns?

A. Yes, I did.

Q. When did you pawn the next one?

A. I believe it was the day after I was evicted from my house. I was evicted in October.

Q. Which gun was that?

A. That was the 30-30.

Q. How much did you get for that gun?

A. $25.

Q. When did you pawn the third gun?

A. The third gun I pawned right after that. I pawned the third gun in October.

Q. Why did you pawn those guns?

A. We had to have grocery money. We didn't even have money for groceries.

Q. Did your finances change after that, sir? You had the money to pick up these guns?

A. Some, yes.

Q. Which gun did you pick up?

A. In January I picked up the 22.

Q. Did you fill out and sign a Treasury form with regard to that?

A. Yes.

Q. Is that Treasury form one of the three forms that the government has introduced in evidence and which I have shown to you prior to this case?

A. Yes, it is.

Q. The 22 in January?

A. Yes, I believe it was the 22.

Q. Did you put the 22 back in?

A. Yes, I did.

Q. Why did you put it back in?

A. I ran out of grocery money again. I had to have some money for just a short time.

Q. Did you sign the three forms which the government has introduced as exhibits when you picked up the guns?

A. Yes, I did.

Q. I am going to show you these forms. May I approach the clerk?

THE COURT: All right.

BY MR. HARRINGTON:

Q. I am handing you Exhibits 2, 3, 4; did you sign these forms?

A. Yes, I did.

Q. Did you read them before you signed them?

A. No, I did not.

Q. Did you read the questions in the fine print in section 4?

A. No, I didn't.

Q. Why didn't you read those forms?

A. Well, they was rushed in there and the guy just throwed the one form out there and he says, "Fill in your name and address on those three little marked lines. Mark no and then sign it and we will release your guns."

Q. Did the pawnbroker or the clerk involved explain these questions to you?

A. No, sir.

Q. Did he read the questions to you?

A. No, sir.

Q. Was the pawnshop crowded at that time as you picked these guns up?

A. Yes, they were.

Q. Did the pawnbroker explain to you that any wrong answer to any of those questions on that form might subject you to criminal penalties?

A. No.

Q. Did you understand that this form related to firearms in particular?

A. No, I didn't. I thought it was a release from the pawn ticket.

Q. How is your reading ability?

A. I can read slow. I am not a very fast reader. I don't have very much education.

Q. What was the highest grade you attended in school?

A. Five.

Q. When you filled out these three forms in connection with taking these guns out of pawn, were there other people waiting to transact business at the loan counter?

A. Yes, there was.

Q. *Did the clerk or the person who asked you to fill out the forms rush you in any way?*

Mr. Campbell: Your Honor, the defense seems to be leading his witness.

The Court: That is right.

Mr. Hafenstein: I am sorry, your Honor.

The Court: You are leading.

By Mr. Hafenstein:

Q. *How much time did you spend filling out each of these three forms?*

A. It would be hard to say, probably half a minute or so, that is why they are so scribbled.

Q. *When was the first time you were aware of the nature of the questions that were being asked on that form?*

A. In your office I believe — no. Wait a minute. I think Mr. Heckard told me something about it at the time of my arrest.

Q. *Did Mr. Heckard tell you that one of the questions on that form involved a question of your past convictions for crimes?*

A. Yes.

Q. *Have you subsequent to your filling out these forms read question #21?*

A. I have.

Q. *On this form?*

A. I have not read it.

Q. *Are you aware of the question it asks at this time?*

A. You explained it to me in your office.

Q. Now you understand that question asks have you been convicted of any crime punishable for a term of punishment exceeding one year?

If you were asked that question during any time before your arrest, what would you have answered?

A. No.

Q. Why is that?

A. Well, my attorney and my probation officer both in Ventura told me that when I completed my probation period and made restitution on these insufficient checks that it would go on record as a misdemeanor.

Q. How many days in jail did you serve on the conviction in California for insufficient funds?

A. I served fifteen days on the honor farm.

Q. Did the attorney you had for that representation on that crime tell you anything about the maximum term on the charge?

A. He told me that I couldn't get over a year.

Q. Did you ever tell Mr. Reichard at any time that you had given a false answer to the questions on this form?

A. No. He told me and I neither admitted or denied it.

Q. What did he tell you?

A. He told me that I had lied on these forms.

Q. Did you tell him anything about your past conviction for felonies?

A. No. He told me I had three -- was a three-time felon. I neither admitted or denied it to him.

Q. What did you say to him?

A. I never said anything to him.

Q. Did you ever tell him you had been convicted of a felony?

A. No, I did not. He told me that I had been convicted of a felony and I neither admitted or denied it to him.

Q. Have you ever read all the questions under section 8 on Exhibits 2, 3 and 4? Would you take a look at them.

(Brief pause.)

A. I have never read any of them.

Q. Have you ever read the entirety of that form?

A. No.

Q. How long do you think it would take you to read that form?

A. I have no idea.

MR. BERNSTEIN: That is all I have, your Honor.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. CAMPBELL:

Q. Mr. Huddleston, you say you filled out those forms very hurriedly?

A. I did.

Q. Is it your practice to fill out forms without reading them?

A. In many cases, yes.

Q. And you signed your name without reading what you signed your name to?

A. In many cases, yes.

Q. Isn't it true that your wife purchased these guns?

A. Pardon?

Q. Isn't it true that your wife bought these guns?

A. Yes, it is.

Q. Was she in the hospital at the time you pawned them?

A. No, she was just out.

Q. Just out of the hospital?

A. She had seven heart attacks in June.

Q. And you pawned them because she needed the money?

A. We needed the money for groceries.

Q. Have you ever fired any of these guns?

A. Up in the mountains target practicing, yes.

Q. Each of the guns?

A. Yes.

Q. When asked by your counsel you stated that you didn't answer questions that Mr. Reichard directed to you in the car, is that right?

A. I did answer questions that he asked me on different things.

Q. Isn't it true that during the course of that questioning he asked you, "Didn't you know that you lied on the form?" and you answered "Yes"?

A. I did not answer.

Q. What was the maximum sentence you say you were told that you were going to serve on that state offense or could have served?

A. My attorney told me that I could have got up to one year in the county jail.

Q. Did the judge ever tell you what sentence you were getting?

A. No, sir.

Q. Or could have gotten?

A. No, sir.

Q. Were you ever asked that when you went before the municipal court and were arraigned on that matter?

A. No.

Q. During the course of that conviction didn't you admit a prior?

A. Yes.

Q. Did you ever ask anybody why it was involved?

A. No, I did not.

Q. If that had any effect on the sentence?

A. No.

Q. Your attorney never explained that to you?

A. No, he didn't.

Q. That is your handwriting on the form?

A. It is.

MR. CHARNOW: No further questions.

THE COURT: Redirect?

MR. SAVARESE: None.

THE COURT: Mr. Huckleston, do you understand the difference between a misdemeanor and a felony to be one year in county jail and more than two years, is that what you understand?

THE WITNESS: Yes.

THE COURT: When you were arraigned on your charge in Ventura County, weren't you advised at that time that you were being arraigned on a violation of 470(a), a felony?

THE WITNESS: I was not.

THE COURT: Wasn't that read to you as part of the complaint?

THE WITNESS: Yes, this is true. But as I said, my probation officer and my attorney both told me that when I made restitution on these checks and my probation was over that it would go on record as a misdemeanor.

THE COURT: But that was after the thing, wasn't it?

THE WITNESS: No, that was during the thing.

THE COURT: When you were arraigned you thought you could get more than one year, didn't you?

THE WITNESS: Yes.

THE COURT: You were told that weren't you?

THE WITNESS: Yes.

THE COURT: That you could get more than one year?

THE WITNESS: But that they wasn't going to.

THE COURT: That was as a result of some kind of a bargain that your lawyer made with the D.A., is that right, with the judge?

THE WITNESS: I have no idea.

THE COURT: Did he tell you that he worked out something with the District Attorney and that the judge would not give you more than a year?

THE WITNESS: He did. That if I would make restitution that they would put me — give me the probation.

THE COURT: Did you get a copy of these forms that you filled out?

THE WITNESS: Which form is that?

THE COURT: 4473.

THE WITNESS: No.

THE COURT: Didn't you look at any part of that form?

THE WITNESS: The only thing I looked it is after he throwed it over there I wrote out my name, my height, weight and I put in my address and wrote no down here and signed my name and that's that.

THE COURT: Did you read the black printing at the top of the form that it is a U.S. Treasury form?

THE WITNESS: I did not pay no attention to it. No, sir, I did not.

THE COURT: Three times you filled out that form and you never realized you were filling out some form for the United States Treasury Department?

THE WITNESS: I did not.

THE COURT: Or that eagle up there was the same thing that you find on your income tax form?

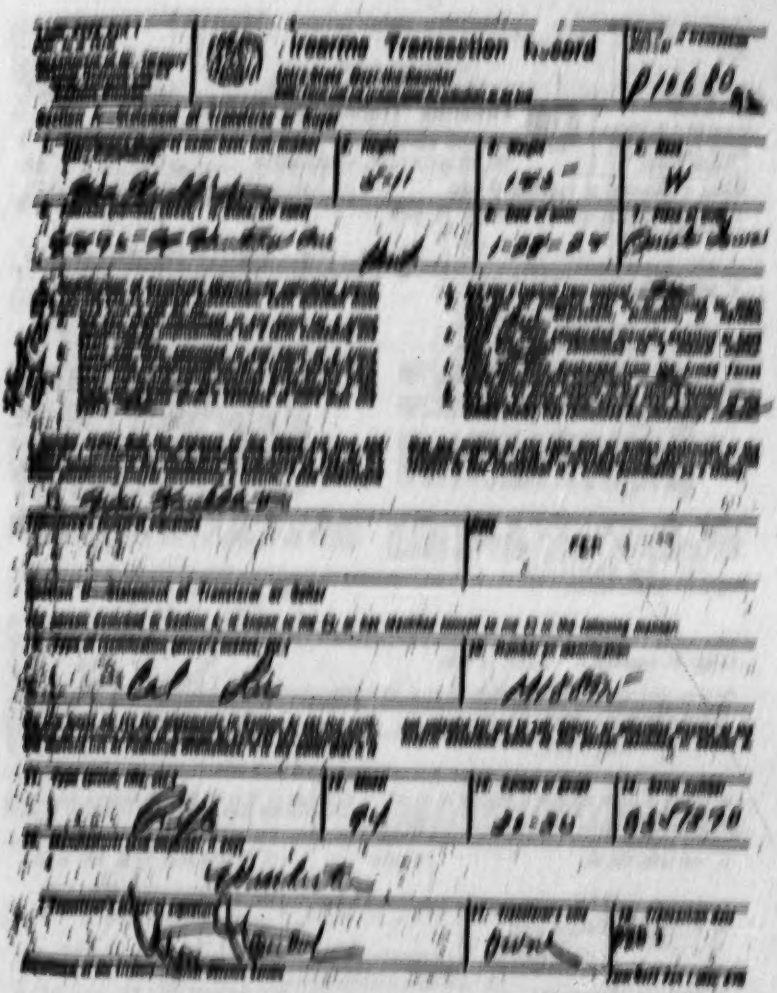
THE WITNESS: I did not even notice it. I did not pay any attention to it.

THE COURT: Anything further?

THE WITNESS: My main interest was in redeeming the guns before the time run out on us for us to keep them out of pawn.

THE COURT: Anything further?

MR. CAMPBELL: No, your Honor.



GOVERNMENT'S EXHIBIT 8

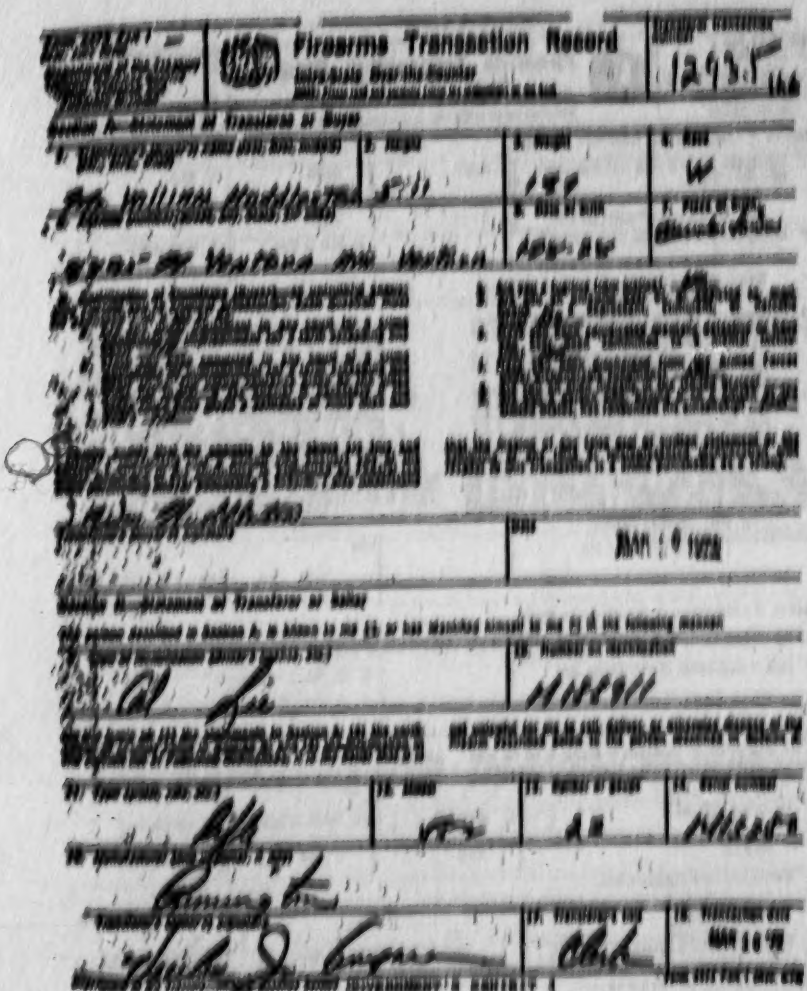
FACSIMILE COPY

Firearms Transaction Record

[redacted]

[redacted]

[redacted]



Firearms Transaction Record

1293

FACSIMILE COPY

Firearms Transaction Record

Mr. William Huddleston

8999 N. Ventura Ave., Ventura

5-29-28

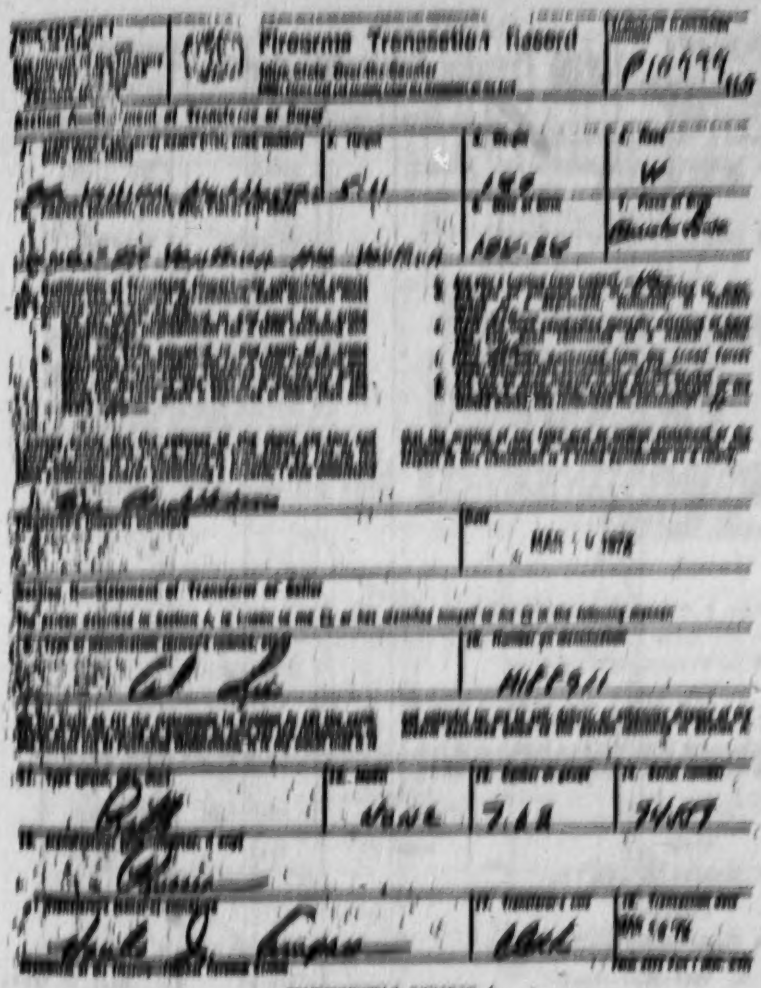
Oxnard, Iowa

Mar. 10, 1973

Mar. 10, 1973

/s/ Vasilio S. Ampara

GOVERNMENT'S EXHIBIT 1



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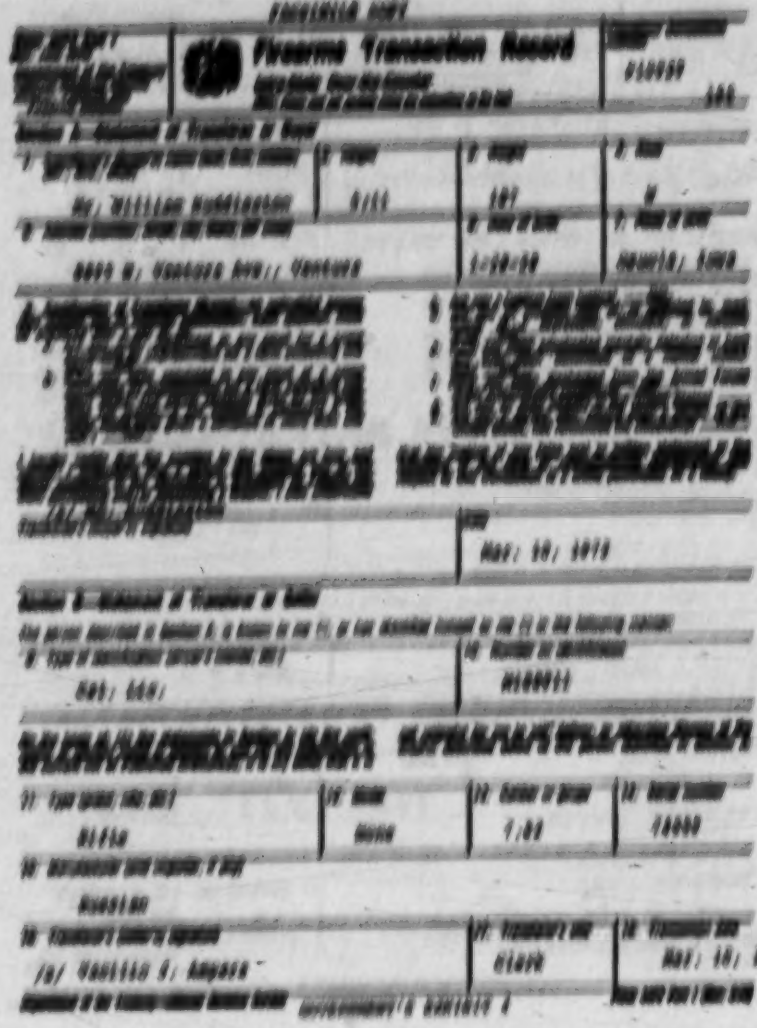

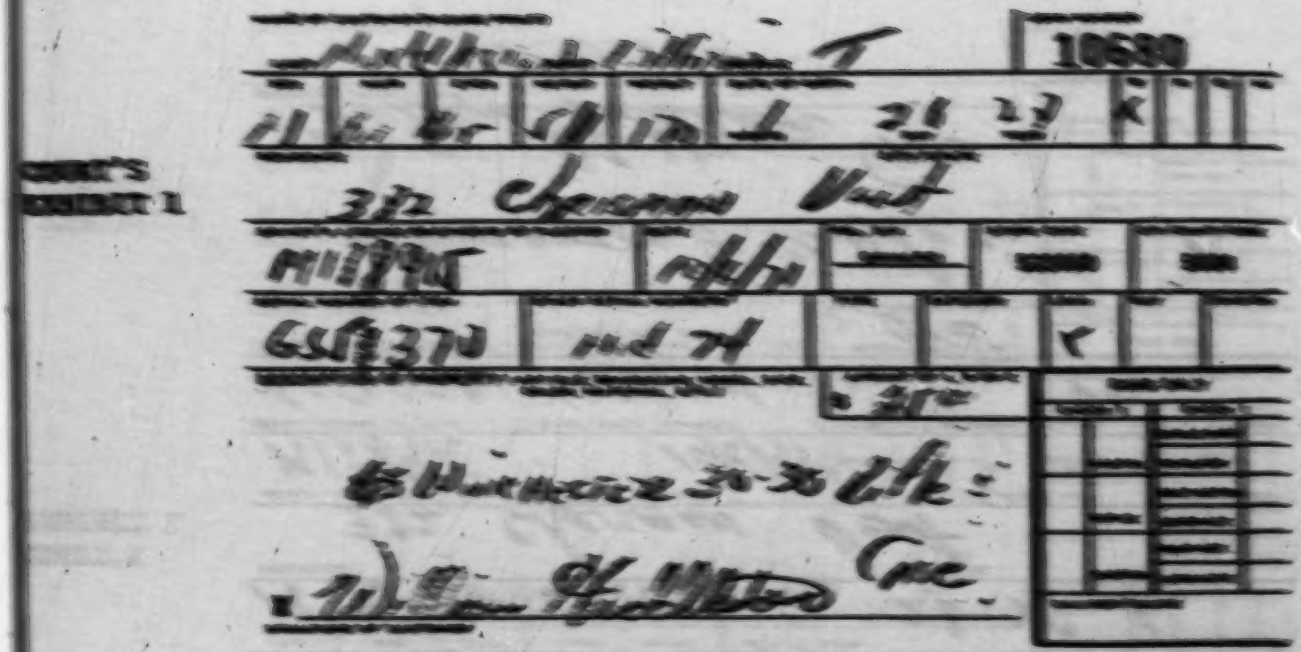

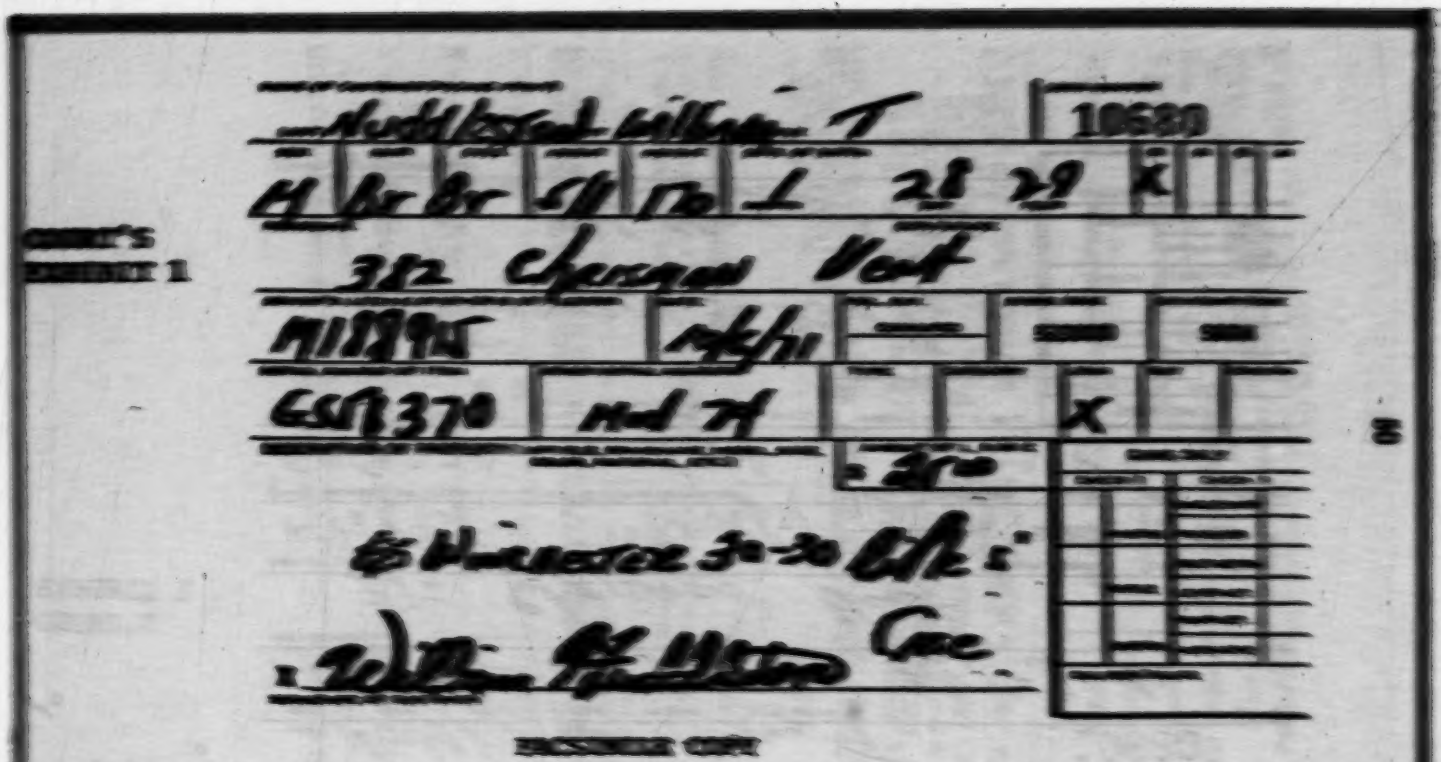

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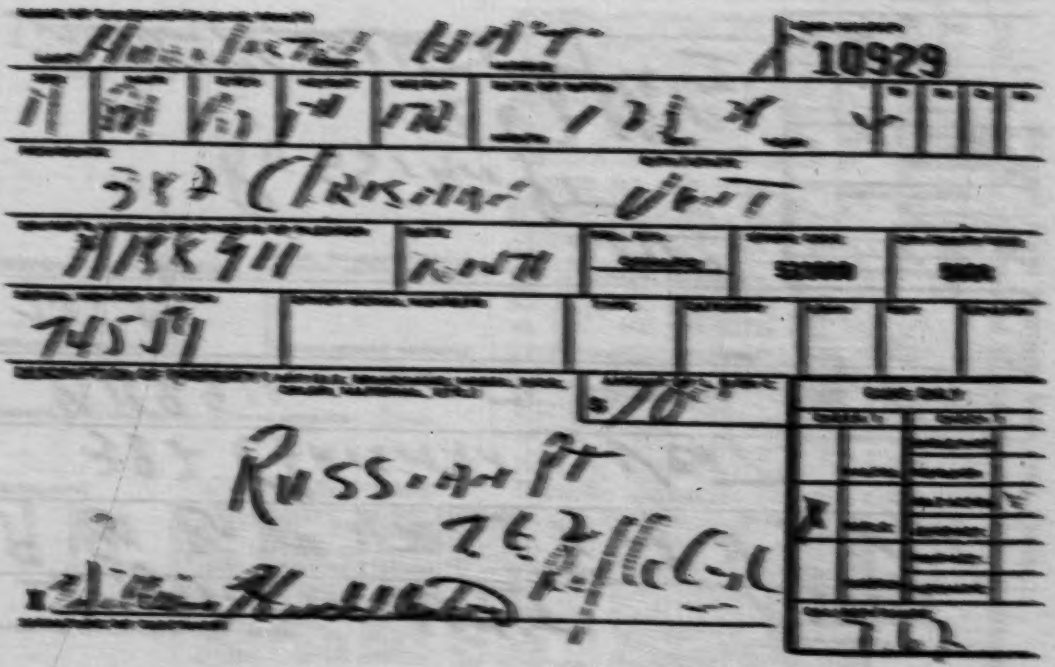
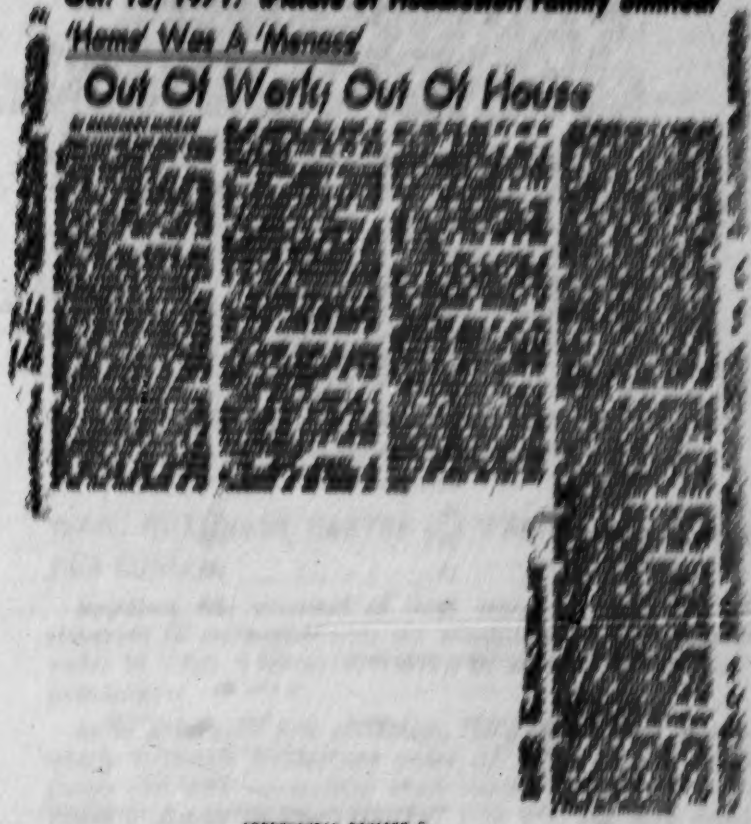
COURT'S EXHIBIT 3



Excerpt from Ventura Star Free Press
Oct. 13, 1971. (Picture of Huddleston family omitted)

'Home' Was A 'Menace'

Out Of Work; Out Of House



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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	Plaintiff-Appellee,	No. 72-2170
vs.		
WILLIAM G. HUGHLETON,	Defendant-Appellant.	

(January 8, 1973)

Appeal from the United States District Court
Central District of California

Before: CHAMBERS, CARTER and WRIGHT, Circuit Judges.

PER CURIAM:

Appellant was convicted of three counts of making a false statement in connection with the acquisition of three firearms, under 18 U.S.C. § 922(a)(6) (1970), by redeeming them from a pawnbroker.

As to appellant's first contention, Congress intended to reach wholly intrastate transactions under the Firearms Act, on the theory that such transactions affect interstate commerce. United States v. Nenna (9 Cir. 1971) 451 F.2d 882, 884, cert. denied, 405 U.S. 988 (1972). We hold that the statute is constitutional.

Appellant next claims that the statutory term "acquisition" was not meant to reach redemption of firearms from a pawnbroker, and that its plain meaning is not broad enough to do so, citing the factually similar case of United States v. Leisure (8 Cir. 1971) 466 F.2d 709, 711-12. We decline to follow that case.

We hold that the term "acquisition" in 18 U.S.C. § 922(a)(6), when read together with the ensuing language prohibiting false statements "with respect to any fact material to the lawfulness

of the sale or other disposition of such firearm," clearly and unambiguously defines an offense. The terms "acquisition" and "other disposition" are clearly correlatives. United States v. Beebe (10 Cir. 1972) 467 F.2d 292, 294.

The statutes were meant to and did prohibit false statements in connection with the redemption of firearms from a pawnbroker, who is a "dealer" under 18 U.S.C. § 921(a)(11)(C).

Appellant's other contentions have been considered, and they are without merit.

The judgment is affirmed.

CHAMBERS, Circuit Judge, concurring and dissenting:

I concur that the statute is constitutional as applied.

But what Huddleston did was conspire. I do not believe that "conspire" is necessarily included within "acquire." That seems to be a little too broad when we construe a criminal statute.

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Office of the Clerk
United States Court of Appeals for the Ninth Circuit
[illegible]
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San Francisco, California 94101

Re: No. 72-2779 USA vs. WILLIAM G. HUDDLESTON

RECEIVED
JAN 10 1973
M. L. B.

Dear Sir:

An opinion in the above case was filed today, and pursuant to Rule 36 of the Federal Rules of Appellate Procedure a judgment was entered today:

Affirmed.

this judgment or order of the court below (or administrative agency);

Pursuant to Rule 41(a) the mandate of this court will issue 21 days after the entry of judgment, unless the court enters an order otherwise. If a stay of the mandate or a petition for rehearing is filed, if a petition for rehearing is filed and denied, the mandate shall issue 7 days after the entry of the order denying the petition.

Very truly yours,

[illegible]
Clerk of Court